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Rationale for Changes Needed to the Tobago Bills – the (Constitution (Amendment) (Tobago Self-Government) Bill, 2020 and the Tobago Island Administration Bill, 2021) and an Optimal Path Forward

I. Introduction

After extensive deliberations among its members, the Tobago CivilNet, a non-partisan organisation, has agreed to the following sets of reasons why the Bills on internal self-government for Tobago put forward by the Joint Select Committee of the Parliament (JSC) would in fact deny Tobago the equality of status and the right to self-determination promised in the Bills. The Tobago CivilNet has also presented below an optimal path forward for Tobago from the current situation.

II. Rationale for Changes Needed to the Tobago Bills

1. The recommendations do not enshrine in the Constitution a Bill of Rights of Tobago as a starting point for autonomous executive and legislative governance in Tobago.
2. The Bills place the governance arrangements for Tobago in a Constitution that is controlled by Trinidad – via majorities in the two Houses that could defeat Tobago’s ambitions. If Tobago should ever want to change those arrangements, it would need to get permission from Trinidad. This amounts to denying Tobagonians “the right to determine, in Tobago, their political status ...”. It would also deny Tobago equal status with Trinidad.
3. The Bills define Tobago without its off-shore economic-geographical boundaries as per the following declaration: “[R]eference to ‘Tobago’ means the Island of Tobago, Little Tobago, St. Giles Island, Marble Island, Goat Island, Sisters Island and the internal and inland waters of Tobago.” This proposal is regressive, as it means that the jurisdiction, however limited, over six miles of Trinidad and Tobago territorial waters that Tobago currently enjoys in the 1996 Tobago House of Assembly (THA) Act would be removed.
4. The Bills assign to Tobago two schedules of responsibilities: a 4th Schedule of areas for law making by the Tobago House of Assembly (THA) in Tobago, and a 5th

Schedule for areas stipulated by the Parliament and to be administered by the THA in accordance with laws made by the Parliament. Further, they seemingly leave all reserve powers to the Parliament. Crucially, the 5th Schedule leaves to Trinidad policy- and law-making responsibilities for key areas (e.g., land, labour, education, tourism, and transportation) that are vital to Tobago's push for economic, social, and institutional development, and for which it must be able to make policy and law. In this regard, there is no associated right of concurrence, which would contradict the declared principle of self-determination.

5. The governance arrangements in the Bills also seem to entrench formal measures which deny self-determination and equality of status – in a word, autonomy – as follows:
 1. The Cabinet reserves the right to intervene in the governance of Tobago whenever it deems that “an emergency or unforeseen circumstance” exists that requires its intervention.
 2. The Cabinet dominates the dispute resolution process. The Prime Minister and two Cabinet members make up the majority of the proposed 5-member Mediation Committee, with the other 2 members coming from the THA Executive Council. In any case, it is not clear how a “Mediation Committee” could logically be comprised of the parties to the dispute requiring mediation.
 3. The Minister of Finance and two Cabinet members make up the majority of the proposed 5-member Fiscal Review Commission, with the other 2 members coming from the Executive Council, resulting in a predominance by the Cabinet at decision time. Further, since the first listed responsibility of the Commission is to “determine and recommend to Parliament the sums required to be (annually) appropriated to Tobago”, what need would there be for a Tobago Legislature, or indeed a Tobago House of Assembly?
 4. The Minister of Finance controls the borrowing rights of the Tobago Island Government.
 5. The Central Bank controls Tobago's investment portfolio.
 6. The Parliament, which is dominated by Trinidad, reserves the right to prescribe the powers, privileges and immunities of the Members and Committees of the House of Assembly which undermines the THA.
6. The proposed redesign of the THA would entrench the undemocratic design of the current THA, as per the following:
 1. The proposed position of Premier is given the right to create an Executive Council that comprises the majority of the THA, which would create an autocratic government by making the non-Executive members a minority of the THA.
 2. With a minority of non-Executive members in the THA, provisions for legislative oversight would be ineffective. In particular, it would be impossible to constitute the different oversight committees proposed.
 3. There are no provisions for the public to petition the THA.
 4. There is no provision to empower elected representatives to effectively represent their districts.
 5. The practice is continued of appointing to the THA unelected Councillors, and is made worse by giving the President, whose appointment the Tobago electorate did not participate in, the right to appoint two.

6. The presence of a unicameral design without strict oversight limits sufficient participation of the public in its own governance.
7. The Public Service is left without anti-corruption, whistle-blower arrangements and the shelter of a Legislature with adequate capacity for oversight and petitioning.
7. It is unclear how the division of the Service Commissions to locate two subordinates in Tobago in so-called 'Tobago Divisions' would promote either equality of status or self-determination for Tobago, or indeed fairness and equity in appointments in the Public and Teaching Services in Tobago.
8. The financing arrangements for the Tobago Island Government are arbitrary and contrary to the principles of equality of status and self-determination, as specified below:
 1. The minimum of 6.8% is not based on any known economic principle, and thus cannot be adjusted on a rational basis. It would also deny equality of status to Trinidad.
 2. The Fiscal Review Commission appears to entrench Tobago's dependence on the Cabinet.
 3. The absence of maritime boundaries would make it virtually impossible to adequately develop maritime revenues for Tobago that reflect the equal status principle.
 4. The Minister of Finance controls Tobago's borrowing rights.
 5. The Central Bank controls Tobago's investment programme, without any option for Tobago to manage its own affairs from Tobago.

III. The Way Forward – Constitutional Imperatives

The Tobago CivilNet proposes the following as an optimal path forward to ensure both equality of status and self-determination for Tobago within the framework of the Sovereign Democratic State of Trinidad and Tobago.

1. Tobago's self-determination must be encoded in a set of principles which can be summarized as a 'Bill of Rights for Tobago'.
2. To reflect the principles of equality of status and self-determination of Tobago, an updated Constitution Amendment Bill must originate from Tobago, reflecting a Tobago position as defined by its system of representation through the THA.
3. Accordingly, with the support of Civil Society, the 12 currently elected representatives of the THA must, in the best interest of Tobago and not of political partisanship, provide the leadership and formality necessary to draft the appropriate Bill and pursue its passage in Trinidad.

IV. The Way Forward – Obligations of the 12

Tobago CivilNet, as a member of Civil Society, recommends to the 12 elected representatives that they do the following:

- a. End the current anti-democratic governance process and move immediately to establish the THA and provide Tobago with a legitimate Executive Council to undertake its 5th Schedule responsibilities.
- b. Establish an appropriate bi-partisan Governance Committee to:
 1. Specify the required amendments of the Constitution that would deliver to Tobago equality of status and self-determination.

2. Lead all negotiations with Trinidad to amend the Constitution in the interest specifically of Tobago and generally of Trinidad and Tobago.

V. The Way Forward – Commitments of Tobago CivilNet

Tobago CivilNet is committed to the following:

1. Immediately begin to prepare a starting draft to facilitate the work of the 12 currently elected representatives and the newly established THA.
2. In order to initiate the actions in III above with the necessary urgency in the best interest of the people of Tobago in the context of the nation, seek an audience with the 12 elected representatives, collectively or as two groups, to obtain their response and, hopefully, agreement on the proposals contained herein.

Tobago CivilNet is committed to ensuring that the THA can gain immediate access to the level of technical support necessary to draft the required amendments.

If the initiative to have the 12 lead the process does not succeed in a timely manner, Tobago CivilNet will send our response to the Joint Select Committee unaltered and set about developing a programme to inform and persuade the public on our perspectives.